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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,058	05/06/2004	Kenneth W. Bair	RYL 2 0535-3-3-2-1-1	6649

7590 09/24/2004
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EXAMINER

TILL, TERRENCE R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/840,058

Applicant(s)

BAIR ET AL.

Examiner

Terrence R. Till

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,15-17 and 19-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-34 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,15-17 and 19-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/6, 8/19, 2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the convoluted outer surface (claim 4) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means"

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and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because the abstract exceeds 150 words.

Correction is required. See MPEP § 608.01(b).

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The recitation of said suction source selectively establishing and maintaining an approximately linear suction airstream from said outlet of said cyclonic airflow chamber to said inlet of said airstream suction source is not found in the specification.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 3-7 and 21-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-7 and 15-17 of U.S. Patent No.

6,070,291 in view of Yonkers.

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7. Claims 1 and 3-7 of the '291 patent recite all of the claimed features of claims 1 and 3-7 of the instant application with exception of a nozzle base on which said housing is pivotally mounted. The patent to Yonkers discloses an upright cyclonic vacuum cleaner that has a housing 14 pivotally mounted to a nozzle base 12 (column 2, lines 50-55). It would have been obvious to a person skilled in the art at the time the invention was made to modify the vacuum cleaner of claim 1 of the '291 patent to have the housing pivotally mounted to a nozzle base in view of the teaching of Yonkers since it would make it easier for a user to maneuver the vacuum cleaner around the room. With respect to claims 21-24 of the instant application, claims 15-17 of the '291 patent disclose all the recited subject matter with exception of a nozzle base on which said housing is pivotally mounted. As stated above, Yonkers discloses an upright cyclonic vacuum cleaner that has a housing 14 pivotally mounted to a nozzle base 12. It would have been obvious to a person skilled in the art at the time the invention was made to modify the vacuum cleaner of claim 15 of the '291 patent to have the housing pivotally mounted to a nozzle base since it would make it easier for a user to maneuver the vacuum cleaner around the room.

8. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,591,446 in view of Yonkers.

9. Claim 1 of the '446 patent recite all of the claimed features of claim 1 of the instant application with exception of a nozzle base on which said housing is pivotally mounted. The patent to Yonkers discloses an upright cyclonic vacuum cleaner that has a housing 14 pivotally mounted to a nozzle base 12 (column 2, lines 50-55). It would have been obvious to a person skilled in the art at the time the invention was made to modify the vacuum cleaner of claim 1 of the '446 patent to have the housing pivotally mounted to a nozzle base in view of the teaching of

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Yonkers since it would make it easier for a user to maneuver the vacuum cleaner around the room.

10. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,735,815 in view of Yonkers.

11. Claim 1 of the '815 patent recite all of the claimed features of claim 1 of the instant application with exception of a nozzle base on which said housing is pivotally mounted. The patent to Yonkers discloses an upright cyclonic vacuum cleaner that has a housing 14 pivotally mounted to a nozzle base 12 (column 2, lines 50-55). It would have been obvious to a person skilled in the art at the time the invention was made to modify the vacuum cleaner of claim 1 of the '815 patent to have the housing pivotally mounted to a nozzle base in view of the teaching of Yonkers since it would make it easier for a user to maneuver the vacuum cleaner around the room.

12. Claims 15-17, 19 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-17, 19 and 20 of U.S. Patent No. 6,070,291 in view of Yonkers.

13. Claims 15-17 and 19 of the '291 patent recite all of the claimed features of claims 15-17, 19 and 20 of the instant application with exception of a nozzle base on which said housing is pivotally mounted, an inlet mounted on a side wall and an outlet parallel to the axis of the housing section. The patent to Yonkers discloses an upright cyclonic vacuum cleaner that has a housing 14 pivotally mounted to a nozzle base 12 (column 2, lines 50-55), an inlet 86 mounted on a side wall and an outlet 86 parallel to the axis of the housing section. It would have been obvious to a person skilled in the art at the time the invention was made to modify the vacuum

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cleaner of claim 15 of the '291 patent to have the housing pivotally mounted to a nozzle base in view of the teaching of Yonkers since it would make it easier for a user to maneuver the vacuum cleaner around the room. Additionally, It would have been obvious to a person skilled in the art at the time the invention was made to modify the vacuum cleaner of claim 15 of the '291 patent to have an inlet mounted on a side wall and an outlet parallel to the axis of the housing section as these features are not only quite common to cyclonic action cleaners, but necessary to be cyclonic action cleaners.

Allowable Subject Matter

14. Claims 25-34 are allowed.
15. Claims 1, 3-7, 15-17 and 19-24 are free of the prior art.
16. The following is an examiner's statement of reasons for allowance: The prior art does not disclose nor render obvious the claimed combination of subject matter of a vacuum cleaner comprising: a housing defining a cyclonic airflow chamber for separating contaminants from a suction airstream, said housing further comprising an inlet for said cyclonic airflow chamber and an outlet for said cyclonic airflow chamber; a nozzle base on which said housing is pivotally mounted. Said nozzle base including a main suction opening, fluidically connected with said cyclonic airflow chamber inlet; an airstream suction source having an inlet disposed adjacent said cyclonic airflow chamber outlet and a suction source exhaust outlet, said suction source selectively establishing and maintaining an approximately linear suction airstream from said outlet of said cyclonic airflow chamber to said inlet of said airstream suction source; and a main filter assembly positioned between said cyclonic airflow chamber and said suction source for filtering contaminants from said suction airstream.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

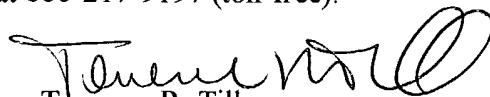
Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Wright et al. and Bair et al. are other patents with the same assignee covering different aspects of the invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Terrence R. Till

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Primary Examiner

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